

BARNES & THORNBURG



11 South Meridian Street  
Indianapolis, Indiana 46204  
(317) 236-1313  
(317) 231-7433 Fax

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

|                   |  |   |
|-------------------|--|---|
| Customer No.      | 23643  | } |
| Group:            | 3764   | } |
| Confirmation No.: | 2081   | } |
| Application No.:  | 10/083,966   | } |
| Invention:        | METHOD AND APPARATUS FOR<br>INDUCING SPUTUM SAMPLES<br>FOR DIAGNOSTIC EVALUATION | } |
| Inventor:         | Van Brunt, Nicholas P., et al.   | } |
| Filed:            | February 25, 2002  | } |
| Attorney          |  | } |
| Docket:           | 7175-74147   | } |
| Examiner:         | DeMille, Danton D.   | } |

**TERMINAL DISCLAIMER**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

The owner, Advanced Respiratory, Inc., certifies that it is the assignee of the entire right, title, and interest in the patent application identified above by virtue of an Assignment from the inventors to American Biosystems, Inc. as recorded in the records of the U.S. Patent and Trademark Office beginning at Reel/Frame 010218/0642 and by virtue of a Change of Name from American Biosystems, Inc. to Advanced Respiratory, Inc. as recorded in the records of the U.S. Patent and Trademark Office beginning at Reel/Frame 012813/0277. The owner, Advanced Respiratory, Inc., also certifies that it is the assignee of the entire right, title, and interest in U.S.

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Patent No. 6,379,316 (having Application No. 09/387,312) by virtue of an assignment from the inventors to American Biosystems, Inc. as recorded in the records of the U.S. Patent and Trademark Office beginning at Reel/Frame 010218/0642 and by virtue of a Change of Name from American Biosystems, Inc. to Advanced Respiratory, Inc. as recorded in the records of the U.S. Patent and Trademark Office beginning at Reel/Frame 012813/0277. Accordingly, the entire right, title, and interest in and to the present application and U.S. Patent No. 6,379,316 are each owned by Advanced Respiratory, Inc.

Advanced Respiratory, Inc., hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on this application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. §§ 154 to 156, as presently shortened by any terminal disclaimer, of prior U.S. Patent No. 6,379,316. The owner hereby agrees that any patent so granted on this application shall be enforceable only for and during such period that it and U. S. Patent No. 6,379,316 are commonly owned. This agreement runs with any patent granted on this application and is binding upon the grantee, its successors, or assigns.

In making the above disclaimer, the assignee does not disclaim the terminal part of any patent granted on this application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. §§ 154 to 156 of U.S. Patent No. 6,379,316, as presently shortened by any terminal disclaimer, in the event that U.S. Patent No. 6,379,316 later expires for failure to pay a maintenance fee, is held unenforceable, is found invalid by a court of competent jurisdiction from which no appeal is, or can be, taken, is statutorily disclaimed in whole or terminally disclaimed under 37 C.F.R. § 1.321, has all claims canceled by a reexamination certificate, is reissued, or is in any manner terminated prior to the expiration of its full statutory term as presently shortened by any terminal disclaimer.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States

Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

The undersigned is an attorney of record.

Authorization to charge the deposit account of Barnes & Thornburg No. 10-0435 with reference to file 7175-74147 to cover the fee for this Terminal Disclaimer is granted.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and that any shortages and other fees be charged, or any overpayment in fees be credited, to the account of Barnes & Thornburg, Deposit Account No. 10-0435, with reference to file 7175-74147.

Respectfully submitted,

BARNES & THORNBURG

A handwritten signature in dark ink, appearing to read 'M. Newman', followed by a horizontal line.

Mark M. Newman  
Attorney Reg. No. 31,472